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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

PRISCILLA PEIEN YUAN,

Defendant and Appellant.

H037537

(Santa Clara County
Super. Ct. No. B1155077)

Defendant Priscilla Peien Yuan was charged with felony assault with a deadly weapon. Based upon the opinions of two psychologists, the court determined that defendant was incompetent to stand trial and ordered her committed to a locked psychiatric facility for a term of no more than three years. Defendant claims that she was denied due process because (1) she was not afforded the opportunity either through counsel or by herself personally to argue in favor of a finding that she was competent; (2) she was not permitted to have separate counsel appointed who would argue that she was competent to stand trial; and (3) she was not allowed to confront witnesses by contesting the conclusions contained in the psychologists' reports relied on by the court. We conclude that there was no error and will therefore affirm the commitment order.

FACTS¹

Defendant was “alleged to have ‘attempted to strike’ a roommate ‘multiple times with a metal bladed sword’ after arguing with him and other residents.”

PROCEDURAL BACKGROUND

Defendant was charged by felony complaint filed July 21, 2011, with one count of assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1).² The court thereafter expressed a doubt as to defendant’s competence to stand trial and suspended criminal proceedings. Based upon the reports of two psychologists, the court found defendant not competent to stand trial. The court issued an order committing defendant to the State Department of Mental Health for placement in a locked psychiatric facility for the incompetent under section 1370, subdivision (a)(2), with a maximum term of three years. Defendant filed a timely notice of appeal from the commitment order, which is appealable under Code of Civil Procedure section 904.1, subdivision (a)(1). (*People v. Fields* (1965) 62 Cal.2d 538, 542.)

DISCUSSION

I. *Determination That Defendant Was Not Competent to Stand Trial*

A. *Background and Contentions*

On August 9, 2011, the court declared a doubt as to defendant’s mental competency pursuant to section 1368, suspended criminal proceedings, and appointed psychologist Steven Barron, Ph.D., to examine defendant and render a

¹ Our summary of facts is taken from the report of psychologist, Dr. Steven Barron; the report notes that the information is based upon the police report.

² All further statutory references are to the Penal Code unless otherwise stated.

report concerning her competence. Dr. Barron filed a report in September 2011 in which he opined that “due to an active psychiatric illness Ms. Yuan is unable to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner.” In response to defendant’s request, the court appointed psychologist D. Ashley Cohen, Ph.D., to examine defendant and prepare a second report concerning her competency. Dr. Cohen concluded that she was not competent to stand trial.

At the hearing on October 12, 2011, counsel submitted the case on the two psychologists’ reports. The court found defendant not competent to stand trial.³

Defendant contends that the proceedings under which the court found her not competent to stand trial violated her right to due process of law. She argues that “although the record is clear that [defendant] did not wish to be found incompetent and personally objected to the matter being submitted on the doctors^[1] reports, no one spoke for [her] interest in not being committed against

³ The transcript of the proceedings reads in its entirety: “THE COURT: Line 20, Ms. Street, was Priscilla Yuan. [¶] MS. STREET: Yes, she is present. Mallory Street. She is present in custody. [¶] Your Honor, I indicated to Ms. Yuan that the second doctor has come back [with a finding that defendant is] not competent and that is the second doctor^[1] pursuant to her request. [¶] At this time, even though it’s over her objection, it’s my intent to submit on the issue of 1368 based on the two doctors’ reports, which are unanimous. But I did indicate her right to appeal that decision after a decision is made regarding placement.” [¶] THE DEFENDANT: I do not wish to— [¶] THE COURT: At this time, over the objection of the defendant, the Court will find—[Deputy District Attorney] Ms. McGuire, you’re submitting also? [¶] MS. McGUIRE: Yes, Your Honor. Thank you. [¶] THE COURT: The Court will find the defendant not competent to stand trial. This matter is referred to South Bay ConRep for a placement report on October 26, 1:30, in this department for hearing. [¶] And Ms. Yuan, you’re going to have a right to appeal any decision of this Court. It will be done, and your lawyer will file a Notice of Appeal on the placement date. [¶] MS. STREET: Thank you, Your Honor. [¶] THE COURT: Okay. Thank you.”

her will.” She asserts that she had a “due process right to be heard, either directly or through counsel” and that the denial of this right was “structural error requiring reversal per se.” She argues further that the court’s failure to appoint a second attorney to argue in favor of her competence was a denial of due process. Lastly, defendant contends that the failure to allow her to cross-examine witnesses (i.e., the two psychologists who opined in their submitted reports that defendant was not competent) constituted a violation of her due process rights.

The Attorney General disagrees. She contends that under established precedent, the procedure under which the issue of defendant’s competence to stand trial is submitted by stipulation of counsel upon the psychologists’ reports does not violate defendant’s due process rights.

B. *Applicable Law*

It has long been the law that a defendant convicted of a criminal offense is deprived of due process when he or she was legally incompetent at the time of trial. (*Pate v. Robinson* (1966) 383 U.S. 375, 385.) California case law that a criminal defendant may not be tried while he or she is mentally incompetent (*People v. Pennington* (1967) 66 Cal.2d 508, 521) is codified in section 1367.⁴ California’s procedure for determining a defendant’s competence to stand trial is a creature of statute. (See § 1368.) While a criminal proceeding is pending and before judgment, if a court has doubt as to a defendant’s mental competence, it is required to express this doubt and make inquiry of defense counsel or, if the

⁴ “A person cannot be tried or adjudged to punishment while that person is mentally incompetent. A defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” (§ 1367, subd. (a).)

defendant is unrepresented, it must appoint counsel. (§ 1368, subd. (a); see also *People v. Robinson* (2007) 151 Cal.App.4th 606, 616.)⁵

The statutory scheme has been described by one court as follows: “When a doubt arises as to the defendant’s mental competence to stand trial, the trial court has an independent responsibility to state that doubt on the record and, if necessary, recess the proceedings to permit defense counsel to form an opinion as to his client’s competency to stand trial. (§ 1368, subd. (a).) If defense counsel shares the court’s doubt regarding the defendant’s competence, a special hearing shall be held in the superior court to determine the question of competence. (§ 1368, subd. (b).) [¶] However, the statutory scheme recognizes that defendant, his counsel, and the prosecution may all believe that defendant is competent. Facing the prospect of up to three years of involuntary confinement without a final determination of guilt or innocence, defendant and his counsel often will not seek a finding of incompetency. By statute the court may in such circumstances nevertheless order a hearing on its own motion in order to assure that a mentally incompetent person is not being tried for a criminal offense. (§ 1368, subd. (b); [citation].)” (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 457-458, fns. omitted.)

The court must order a hearing on the issue of competence if it has a reasonable doubt, based upon substantial evidence, concerning the defendant’s

⁵ “If, during the pendency of an action and prior to judgment, a doubt arises in the mind of the judge as to the mental competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. If the defendant is not represented by counsel, the court shall appoint counsel. At the request of the defendant or his or her counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to the mental competence of the defendant at that point in time.” (§ 1368, subd. (a).)

competence to stand trial. (Cal. Rules of Court, rule 4.130(b)(1).) Further, section 1369, subdivision (a), provides in pertinent part: “The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. In any case where the defendant or the defendant’s counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof.” (§ 1369, subd. (a); see also *People v. Robinson*, *supra*, 151 Cal.App.4th at p. 618.)

The proceeding to determine a criminal defendant’s competence to stand trial “ ‘is a special proceeding civil in nature.’ [Citations.]” *People v. Stanley* (1995) 10 Cal.4th 764, 807 (*Stanley*).) The defendant is presumed competent, and the party seeking to establish incompetence bears the burden of proving it by a preponderance of the evidence. (§ 1369, subd. (f); see also *Stanley*, at p. 806; *People v. Medina* (1990) 51 Cal.3d 870, 881-885.) The right to a jury trial is entirely statutory. (*People v. Samuel* (1981) 29 Cal.3d 489, 505.) Matters of trial tactics in the conduct of those proceedings may be left to defense counsel. (See *People v. Hill* (1967) 67 Cal.2d 105, 114-115 [in competency proceedings, counsel’s failure to insist on jury trial, call witnesses, or cross-examine physicians concerning their reports, did not constitute “representation [that] was a farce or a sham”].) Thus, in *People v. McPeters* (1992) 2 Cal.4th 1148, 1168-1169 (*McPeters*), superseded by statute on another point as stated in *Verdin v. Superior Court* (2008) 43 Cal.4th 1096, 1106-1107, the high court rejected defendant’s challenge that his counsel’s decision to waive a jury trial on the issue of competence violated his statutory and state and federal due process rights. (See also *People v. D’Arcy* (2010) 48 Cal.4th 257, 283 [counsel may waive defendant’s statutory right to jury trial at competency hearing]; *People v. Masterson* (1994) 8 Cal.4th 965, 974 [defense counsel may waive jury trial in competency proceeding

and may make other decisions, such as stipulating to 11-person jury, even over client's objection].)

C. *Whether Proceedings Violated Due Process*

Defendant argues that the proceedings under which she was found incompetent violated her constitutional right to due process. Although stated differently, defendant's due process claim is based at least in part on a challenge to the procedure by which her attorney submitted the issue of competence at the hearing on the psychologists' reports. As noted, trial tactics in conducting competency proceedings are within the domain of defense counsel. (*People v. Hill, supra*, 67 Cal.2d at pp. 114-115.) Thus, defense counsel may waive the statutory right to a jury in such proceedings, and may stipulate to submission of the defendant's competency on the reports of experts. (*People v. Weaver* (2001) 26 Cal.4th 876, 903-904; *McPeters, supra*, 2 Cal.4th at pp. 1168-1169.)

Submission of the issue in such fashion does not violate the defendant's statutory or constitutional rights. (*People v. Weaver*, at p. 905.) As the Supreme Court has explained: "Defendant maintains the above procedure [submission of competency to court on psychiatric reports] violated his statutory and state and federal constitutional due process rights by depriving him of a full, trial-type, adversary hearing on the issue of his competence to stand trial. To the contrary, the procedure adopted by counsel and the court did not deprive defendant of any of his rights. Section 1368 entitles defendant to a 'hearing' on the issue of competence and he received one. Although defendant's counsel, for understandable reasons, elected to waive certain available incidents of the hearing procedure, i.e., the right to jury trial and the rights to present oral testimony and to confront and cross-examine witnesses, defendant presented evidence and received an independent judicial determination of his competence to stand trial based on the stipulated record. [Citation.]" (*McPeters*, at pp. 1168-1169.)

Further, to the extent that defendant's challenge is directed toward her trial counsel's refusal to argue that she was competent to stand trial, such an argument has been routinely rejected by the courts. In *People v. Bolden* (1979) 99 Cal.App.3d 375, 379 (*Bolden*), the defendant's claim was based upon the fact that his attorney advocated the position that his client was incompetent, a position with which the defendant disagreed. The court rejected the ineffective assistance challenge, holding: "Diligent advocacy does not require an attorney to blindly follow every desire of his client. An attorney can ordinarily make binding waivers of many of his client's rights as to matters of trial tactics [citation]. When the attorney doubts the present sanity of his client, he may assume his client cannot act in his own best interests and may act even contrary to the express desires of his client [citation]. To do otherwise may cause prejudicial error [citation]." (*Id.* at pp. 379-380.) In reaching its conclusion, the *Bolden* court relied in part on the following observation of the high court: "Obviously, where the attorney has doubts as to the present sanity of the defendant he should be able to make decisions as to how the proceedings should be conducted. When evidence indicates that the defendant may be insane it should be assumed that he is unable to act in his own best interests. In such circumstances counsel must be free to act even contrary to the express desires of his client. [Citation.] Conducting the trial according to the dictates of a defendant who, evidence indicates, may be insane, can result in prejudicial error. [Citation.]" (*People v. Hill, supra*, 67 Cal.2d at p. 115, fn. 4.)

This duty of defense counsel to act potentially contrary to the client's wishes in competency proceedings was reiterated by the high court in *People v. Samuel, supra*, 29 Cal.3d 489, where the court upheld defense counsel's strategy of permitting psychiatric experts to consider the defendant's purportedly illegally obtained confession arising out of a police interrogation. The court held: "[A]

section 1368 hearing is held only after there has been a prima facie showing of mental incompetence. Of necessity, therefore, defendant's attorney must play a greater role in making fundamental choices for him, and cannot be expected to seek approval of strategic decisions made in the course of obtaining and presenting proof of incompetence. [Citation.] . . . [I]f counsel represents a defendant as to whose competence the judge has declared a doubt sufficient to require a section 1368 hearing, he should not be compelled to entrust key decisions about fundamental matters to his client's apparently defective judgment." (*Id.* at p. 495; see *Shephard v. Superior Court* (1986) 180 Cal.App.3d 23, 30 [trial court erred in discharging defense counsel based upon perceived conflict of interest, where counsel announced intention to argue client was incompetent contrary to client's wishes].)⁶

Moreover, to the extent defendant implicitly argues that the court erred in failing to allow her to testify in support of her claim of competency, contrary to her attorney's wishes, such a claim has been rejected in *People v. Bell* (2010) 181 Cal.App.4th 1071 (*Bell*). There, the defendant was permitted to testify at his competency hearing over the objection of his counsel, who sought to establish that his client was not competent to stand trial. (*Id.* at pp. 1074, 1075, 1078.) The court in *Bell*—relying in part on *People v. Masterson*, *supra*, 8 Cal.4th at page 974, in which the high court held “that counsel may waive a jury trial in a proceeding to determine whether the defendant is competent to stand trial on criminal charges, and may make other decisions regarding a jury trial, even over the defendant's objection”—held that the court erred in allowing the defendant to

⁶ As the high court later summarized, “[t]he rationale underlying *Samuel* and *Hill* [is] that the person whose competence is in question cannot be entrusted to make basic decisions regarding the conduct of [the competency] proceeding.” (*People v. Masterson*, *supra*, 8 Cal.4th at p. 974.)

testify at the proceeding over his counsel's objection: "Based on the rationale in *Masterson*, we believe that trial counsel should make the decision as to whether a defendant whose competency has been questioned by the trial court should testify at the competency hearing. In some cases, such as in *Bolden*[, *supra*, 99 Cal.App.3d 375], it may make sense for trial counsel to have a defendant testify if counsel believes the testimony supports that he or she is incompetent. However, we agree with *Masterson* that 'counsel must be allowed to do what counsel believes is best in determining the client's competence.' [Citation.] If trial counsel believes it is best that his client not testify, it should be counsel's decision to make." (*Bell*, at p. 1084.)

Lastly, defendant's contention that the proceedings were flawed because she was not afforded a second attorney to argue in favor of her being competent is without merit and is one that has been previously rejected by this court. In *People v. Jernigan* (2003) 110 Cal.App.4th 131, 134-135 (*Jernigan*), the trial court expressed doubt about the defendant's competence and appointed two doctors to examine him, and the defendant indicated to the court that he would refuse to cooperate with the doctors or his counsel. After the defendant failed to appear on the day of the competency hearing, and counsel waived her client's appearance and agreed to submit the matter of competency on the doctors' reports, the court found the defendant incompetent to stand trial. (*Id.* at p. 135.) We rejected the defendant's claim that the court erred in failing to appoint a second attorney to argue his competence. (*Ibid.*) We explained: "The fact that counsel and her client differed on the central issue of defendant's competency does not raise an actual conflict requiring the appointment of a second attorney. Once the judge has declared a doubt sufficient to require a section 1368 hearing, a defendant's attorney necessarily plays a much greater role in making fundamental choices for her client. [Citation.] It is immaterial that the defendant expressly objects to the

course his counsel chooses. To permit a prima facie incompetent defendant to veto counsel's decision to argue that the client is incompetent would increase the danger that the defendant would be subjected to criminal proceedings when he or she is unable to assist counsel in a rational manner. [Citation.] Therefore, '[w]hether or not the client objects, counsel must be allowed to do what counsel believes is best in determining the client's competence.' [Citation.]" (*Id.* at pp. 135-136, quoting *People v. Masterson*, *supra*, 8 Cal.4th at p. 973.)

In so holding in *Jernigan*, we rejected the defendant's claim that the appointment of a second attorney to argue defendant's competence where defense counsel asserts that her client is incompetent is mandated by *Stanley*, *supra*, 10 Cal.4th 764. (*Jernigan*, *supra*, 110 Cal.App.4th at p. 136.)⁷ In *Stanley*, the trial court, during the penalty phase of the trial, suspended proceedings and ordered a trial on the issue of the defendant's mental competence. (*Stanley*, at p. 801.) A jury found that the defendant was competent and the penalty phase resumed. (*Id.* at p. 803.) The defendant claimed on appeal that the trial court had erred by appointing separate counsel for the defendant to advocate his competency, while the defendant's existing counsel attempted to establish that their client was incompetent. (*Id.* at pp. 803-804.) The high court rejected this challenge: "[W]hen counsel believes his client may be incompetent, and the trial court, pursuant to section 1368, has declared a doubt of defendant's competence, defendant is not deprived of effective assistance if defense counsel overrides defendant's desire to present only evidence and argument of competence." (*Id.* at pp. 804-805.) The court concluded: "In appointing separate counsel to represent

⁷ Without specifically stating that the case compels the appointment of a second attorney, defendant here relies on *Stanley* as indicative of the Supreme Court's having "approved" of the procedure.

defendant's point of view, the trial court acted to resolve a conflict, not create one. In so doing it permitted the jury to hear every side of the issue of defendant's competence, thereby assuring defendant a fair trial. In the circumstances, defendant perhaps got more than he was entitled to. But we are unable to conclude he thereby was denied due process." (*Id.* at pp. 806-807, fns. omitted.)

We held in *Jernigan*—as we reiterate here—that *Stanley*'s approval of the appointment of separate counsel to advocate the defendant's competence does not mean that such appointment was constitutionally required under the circumstances. (*Jernigan, supra*, 110 Cal.App.4th at p. 136.) Indeed, the high court's statement that the "defendant perhaps got more than he was entitled to" (*Stanley, supra*, 10 Cal.4th at p. 807) is a clear indication that the procedure of appointing second counsel utilized by the trial court there is not one that is constitutionally or statutorily mandated. Further, any doubt on the subject was recently dispelled by the high court. In *People v. Blacksher* (2011) 52 Cal.4th 769, 853, the court held: "*Stanley* permits but does not *mandate* the appointment of independent counsel when defense counsel and a defendant disagree on the defendant's competency."

We recognize the position asserted by defendant here, as explained by the high court in *Stanley*, that there are competing concerns involving the defendant in a competency proceeding: "[U]nlike a criminal defendant, whose legal interest lies in being found not guilty whether he is guilty or not, the defendant in a competency proceeding has not only the right not to be tried for a criminal offense when he is incompetent; he has an equally important interest in not being sent to a mental institution with his criminal case unresolved, if he is competent. [Citations.]" (*Stanley, supra*, 10 Cal.4th at p. 806.) But as the above authorities clearly demonstrate, "a section 1368 proceeding is different from other criminal and civil commitment proceedings in that its purpose is to protect the defendant.

In that proceeding, . . . once it is established that a trial court has a doubt as to a defendant's competency" (*Bell, supra*, 181 Cal.App.4th at pp. 1085-1086), defense counsel's role in making choices deemed in the best interests of his or her client is elevated, and tactical decisions such as whether to waive statutory jury rights, call witnesses (including the defendant), and submit the determination of competency on professionals' reports, are vested with counsel. We find no constitutional infirmity in the proceedings below in which defense counsel elected not to introduce evidence in support of her client's competency and to submit the matter on the two psychologists' reports, regardless of defendant's claim of competence.

DISPOSITION

The order of commitment is affirmed.

Duffy, J.*

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Mihara, J.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.